

B VOL 3043

CR-02-2104

COURT OF CRIMINAL APPEALS NO.

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CIRCUIT COURT NO. CC 2002-1417

CIRCUIT JUDGE HOBBS

Type of Conviction / Order Appealed From: INTENTIONAL MURDER

Sentence Imposed: LIFE WITHOUT PAROLE

Defendant Indigent: ☒ YES ☐ NO

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(City) (State) (Zip Code)

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NAME OF APPELLANT

STATE OF ALABAMA

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

NAME OF APPELLEE

(For Court of Criminal Appeals Use Only)

part 5 of 5



1 bullet.

2 Q. So it went from looking -- if I
3 am looking at this right, it went from left
4 to right?

5 A. Yes, sir.

6 Q. And the entry of that bullet
7 would have been approximately in the
8 individual's side about where I'm pointing?

9 A. Yes, sir.

10 Q. Now, this wound, next wound that
11 is circled, I believe you marked as wound
12 number two; is that correct?

13 A. That's correct.

14 Q. What is this a photograph of?

15 A. This is a photograph of an
16 entrance wound on the left buttock and
17 there is a little ruler underneath it. It
18 has got that rim of -- it has got that
19 round circular entrance wound
20 characteristic.

21 Q. Doctor, I believe it is real
22 faint, but toward the top can you see wound
23 one as well?

24 A. Toward the top, there is also,
25 yes, wound one.

1 Q. So these are on the same side of
2 the body?

3 A. Yes, sir.

4 Q. That's another characteristic of
5 an entrance wound?

6 A. Yes.

7 Q. Now, again, another diagram has
8 come up showing the rear of the individual
9 with an arrow going across. Did you
10 prepare that diagram as well?

11 A. Yes, I did, sir.

12 Q. And what does the green arrow
13 indicate?

14 A. The direction of the bullet.

15 Q. Now, Doctor, did -- was there an
16 exit wound that corresponded to this
17 injury?

18 A. This bullet entered in the left
19 buttock, traveled through the pelvis and
20 then it stopped in the right hip. The
21 bullet stopped there in the right hip and
22 that's where we recovered it from.

23 Q. So you were able to recover this
24 projectile?

25 A. Yes, sir.

1 Q. Now what is that a photograph of?

2 A. That's the projectile I
3 recovered.

4 Q. Also we have got a larger
5 photograph admitted as State's 31. Do you
6 recognize that?

7 A. Yes, sir.

8 Q. This is the actual physical
9 bullet you took out of the victim?

10 A. Yes, sir.

11 Q. Now, Doctor, let's talk about the
12 final wound, number three. What is that a
13 photograph of that just appeared?

14 A. That's a photograph of an
15 entrance gunshot wound in the left thigh.

16 Q. And the blue circle in the
17 photograph that just appeared?

18 A. Of an exit gunshot wound in
19 the --

20 Q. So we have a matching entrance
21 and exit wound?

22 A. Yes. The bullet simply went
23 through the left thigh.

24 Q. Again, we have a diagram of an
25 arrow. You prepared that diagram?

1 A. Yes, sir.

2 Q. And what does the green arrow
3 indicate?

4 A. The direction of the bullet.

5 Q. Now, Doctor, the angles are a
6 little bit confusing from time to time. So
7 is this a diagram of all three entrance
8 wounds?

9 A. Yes, sir.

10 Q. And what do the green arrows
11 indicate?

12 A. They indicate the direction of
13 the path of the bullet through the body.

14 Q. So he was all shot in the same
15 direction from the same side based on a
16 medical examination of the entrance wounds?

17 A. Yes, sir.

18 Q. And the photograph that just
19 appeared, what is that a photograph of?

20 A. It shows the side of his body and
21 the three entrance gunshot wounds.

22 Q. Now, Doctor, were you able to
23 determine a cause of death for James
24 Friendly?

25 A. Yes, sir.

1 Q. What?

2 A. Multiple gunshot wounds.

3 MR. POWELL: I believe that's all
4 the questions I have for the doctor,
5 Judge.

6 MR. HARTLEY: No cross
7 examination.

8 THE COURT: Okay. Thank you,
9 Doctor.

10 MR. POWELL: Your Honor, I
11 believe the State is going to call Nicole
12 Judkins to the stand.

13 NICOLE JUDKINS,
14 having been first duly sworn, was examined
15 and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. POWELL:

18 Q. Could you state your name for the
19 jury?

20 A. Nicole Judkins.

21 Q. Nicole, I'm going to need you to
22 speak up a little bit for me. Okay?

23 A. Okay.

24 Q. Back in February of 2002, about
25 the 1st, were you hosting a birthday party?

1 A. Yes.

2 Q. Over at your house?

3 A. Yes.

4 Q. Where were you living at the
5 time?

6 A. Smiley Court.

7 Q. Over in Smiley Court? I'm going
8 to show you State's 11. Do you recognize
9 that?

10 A. Yes.

11 Q. Is that your apartment over at
12 Smiley Court?

13 A. Yes, sir.

14 Q. And just for the Record, is
15 Smiley Court the area where you were living
16 when all this occurred? Is that here in
17 Montgomery County?

18 A. Yes.

19 Q. State's 12, is this a closeup
20 photograph of the apartment where you were
21 living?

22 A. Yes.

23 Q. And you were having a birthday
24 party at that apartment for who?

25 A. For my boyfriend.

1 Q. What was his name?

2 A. Christopher McQueen.

3 Q. Some people call him Flip?

4 A. Yes.

5 Q. So it was Flip's birthday. About
6 how many -- you don't have to know the
7 exact number. About how many people were
8 over at your house that day -- that night
9 for the party? Can you even say?

10 A. I don't know. It was so many.

11 Q. A lot? Like more than thirty?

12 A. Not that much.

13 Q. Not that much. But a lot of
14 people?

15 A. Yeah.

16 Q. And a lot of coming and going?

17 A. Yeah.

18 Q. Did you ever see the defendant at
19 that party?

20 A. No.

21 Q. You never saw him over there.

22 Did you ever see an individual name Boo or
23 James Friendly at that party?

24 A. Boo was not at the party. He was
25 outside.

1 Q. He was outside?

2 A. Yeah.

3 Q. Did you ever see an individual
4 named Darryl Foggy at the party?

5 A. Yes.

6 Q. Okay. He was there.

7 A. Yes.

8 Q. Now, were you outside when the
9 shooting occurred?

10 A. No.

11 Q. You weren't. How did you know
12 about it?

13 A. I heard the gunshots.

14 Q. You heard the gunshots. Do you
15 have any idea where Darryl Foggy was when
16 the shooting occurred?

17 A. He was in my house then.

18 Q. You saw him in your house
19 somewhere around the time the shooting
20 occurred?

21 A. Yes.

22 Q. Do you know where Darryl Joyce
23 was when the shooting occurred?

24 A. When I came out the door, he was
25 leaving.

1 Q. He was leaving. Describe for the
2 jury how he was leaving.

3 A. In a blue truck or a blue
4 sidekick, something.

5 Q. You saw him in a blue truck
6 leaving the scene?

7 A. Yes.

8 Q. Where was that blue truck? Which
9 side of your apartment was it on?

10 A. It was in the parking lot.

11 Q. In the parking lot. Okay. Now
12 did you ever see James Friendly again at
13 that party?

14 A. Yes.

15 Q. Where was Boo?

16 A. He was laying on the ground.

17 Q. Was he shot?

18 A. Yes.

19 Q. Okay. Now, when you saw Darryl
20 Foggy at this party, did you -- you did see
21 him with a gun, didn't you?

22 A. I seen the gun in his pocket.

23 Q. You seen a gun in his pocket.

24 Describe for the jurors how it was in his
25 pocket.

1 A. In his front pocket.

2 Q. In the front pocket. And what
3 did that gun look like when it was in his
4 pocket?

5 A. I didn't see the gun. I just
6 seen the --

7 Q. The handle?

8 A. Yeah.

9 Q. What did the handle look like?

10 A. It was black.

11 Q. So the handle of the gun was
12 black when you saw it in his front pocket?

13 A. (Witness nodding head
14 affirmatively.)

15 Q. Did you see who shot James
16 Friendly?

17 A. No.

18 Q. Do you know whether or not Darryl
19 Foggy shot James Friendly?

20 MR. HARTLEY: Objection, Your
21 Honor. She doesn't know who shot him.

22 A. He was in the house during the
23 shooting. That's what I'm saying.

24 MR. POWELL: Nothing further,
25 Judge.

CROSS-EXAMINATION

BY MR. HARTLEY:

Q. Ms. Judkins, let's go back over this again, okay. Of course, you were having a birthday party out there that night, right?

A. Yes.

Q. Now, the events that Mr. Powell was asking you about didn't happen until about 11:30 or so, right?

A. I guess so. I'm not sure.

Q. You don't remember what time a shooting took place at your own home?

A. No, I do not because it was not at my home.

Q. Where was it?

A. It was outside my home.

Q. How close would it be then?

A. Well, I don't know. I mean, it was a party. People was drinking and stuff. So I don't know.

Q. Were you drinking?

A. Yes.

Q. Were you using any illegal drugs?

A. No.

1 Q. Okay. Were persons -- were
2 people at your party using illegal drugs?

3 A. I don't know.

4 Q. Now, you gave a statement to
5 Detective Howton, didn't you, about 6:00 in
6 the morning. Do you remember talking to a
7 Montgomery police officer and that
8 statement being recorded by a videotape or
9 a tape reporter or something?

10 A. I believe -- yeah, I believe so.
11 It's been so long.

12 Q. I just want to know if you have
13 given a statement. I have a copy of it in
14 my hand.

15 A. Yes.

16 Q. You haven't seen your statement,
17 have you? You haven't seen a copy of this
18 statement previously, have you?

19 A. No.

20 Q. I'm going to show it to you in
21 just a moment. But let me ask you, do you
22 remember if when you were talking to
23 Detective Howton, did you tell him about
24 Darryl Foggy having a gun?

25 A. Yes.

1 Q. Do you know what became of that
2 gun in the minutes after this event took
3 place? Do you know what happened to that
4 gun?

5 A. No.

6 Q. What did Darryl Foggy do at or
7 about the time of the -- that y'all heard
8 the gunshots go off?

9 A. Well, we were in the kitchen then
10 but I know after the shooting he left. I
11 don't know where he went.

12 Q. Well, did he leave from the
13 kitchen and then go out the front door and
14 just part or did he go by where James
15 Friendly was and Rabbit were and those
16 people?

17 A. I didn't see him out there. I
18 don't remember seeing nobody but me and
19 Rabbit was out there.

20 Q. You don't remember seeing Darryl
21 Foggy out there?

22 A. No.

23 Q. One moment, please. Let me show
24 you on page six of your statement. You
25 have admitted or acknowledge that you did

1 talk to a police officer. I'm going to
2 show you what appears to be a statement
3 taken by Corporal E.E. Howton, your
4 statement on February the 2nd, and
5 beginning time is 6:24 in the morning,
6 right?

7 A. Uh-huh (indicating yes).

8 Q. And going over -- much further
9 over into page six, they ask you, does he
10 normally carry a gun? And you said -- who
11 are you talking about right here when you
12 said when you came in you saw a gun on him.

13 Who were you talking about?

14 A. That was Darryl -- I mean the
15 other, D.

16 Q. Let's just use last names so
17 we'll be sure. There are two Darryls.

18 A. I don't know the last names.

19 Q. D. Well, you called him D.

20 A. I don't know either one of them
21 really, you know.

22 Q. You don't know them very well but
23 you know that he carries a gun, don't you,
24 Darryl Foggy?

25 A. I seen him with one.

1 Q. And they asked, how did you see
2 it, and you said you saw it, it was in his
3 back pocket. Right?

4 A. It was in his front pocket.

5 Q. Well, why did they write on there
6 because it was in his back pocket?

7 A. I don't know. It been so long
8 since I have had to go through this.

9 Q. But then Officer Howton asked you
10 this question: Okay. But right after the
11 shooting he left? And your answer was
12 what? Would you read that to the jury
13 please?

14 A. Well, he'd been shot. He had to
15 be shot because the man dead. Yes. He
16 disappeared.

17 Q. You said yes, he disappeared.
18 But yes, he disappeared. You are referring
19 to Darryl Foggy as disappearing right?

20 A. Yes. He left.

21 Q. All right. Now, did you discuss
22 this matter about Darryl Foggy leaving
23 right after this event took place with Mr.
24 Howton before the statement was taken? Do
25 you remember if you sat down with Detective

1 Howton and talked about it and y'all went
2 through a preliminary interview? Do you
3 remember if that happened or if it didn't
4 happen?

5 A. I don't know.

6 Q. Did you ever tell Officer Howton
7 that you went outside and saw Darryl Foggy
8 out there and that he fled the scene from
9 the outside?

10 A. Yes, I remember going outside
11 after the shooting. I mean, it been so
12 long I don't remember. I just went out
13 there just to see was he all right. That's
14 all.

15 Q. If Darryl Foggy wasn't involved,
16 why do you think he ran from the scene?

17 A. I don't know that.

18 Q. And you don't know Darryl Joyce
19 at all, the man sitting there at the end of
20 the table?

21 A. No.

22 MR. HARTLEY: Thank you. No
23 further questions.

24 MR. POWELL: Nothing further,
25 Judge.

1 THE COURT: Okay. Thank you
2 ma'am.

3 MR. HARTLEY: Judge, we are going
4 to call -- I have already told Counsel we
5 are going to want to call Mr. Howton back
6 to the stand.

7 MR. POWELL: At this time, Your
8 Honor, the State rests. Hang on one
9 second. I'm sorry. Before we rest, I
10 think -- I don't know if Mr. Hartley has
11 got an objection to it. Again, we can call
12 Detective Howton to cure it, but I think I
13 forgot to move to admit 21. I will move to
14 admit that at this time.

15 MR. HARTLEY: So for the Record,
16 what is 21?

17 MR. POWELL: The gun.

18 THE COURT: The gun.

19 MR. POWELL: Do you have any
20 objection to that?

21 MR. HARTLEY: We are going to
22 call him back anyway.

23 MR. POWELL: I will move to admit
24 State's 21 as far the State's case in
25 chief. With that being done, the State

1 rests.

2 (State's Exhibit Number 21
3 admitted into evidence.)

4 THE COURT: Folks, why don't we
5 take about a five minute break.

6 MR. HARTLEY: Judge, could we ask
7 for a little longer. We have motions to
8 do.

9 THE COURT: Be back in the jury
10 assembly room at 11:15.

11 (Brief Recess.)

12 (The following was held outside
13 the presence and hearing of the jury.)

14 MR. HARTLEY: Judge, we would
15 make a motion for a judgment of an
16 acquittal on behalf of Mr. Darryl Joyce.
17 We submit that the State has failed to make
18 a prima facie case of murder in this matter
19 against Darryl Joyce. We submit that the
20 State has shown no motive. We submit that
21 they have shown no witnesses who have any
22 credibility that could tie Darryl Joyce to
23 the death of James Friendly, and we ask the
24 Court to dismiss these charges and not
25 allow this case to go to the jury. Failure

1 to a amke prima facie case.

2 THE COURT: Denied.

3 MR. HARTLEY: No response from
4 the State, Judge?

5 THE COURT: I don't need one.

6 MR. HARTLEY: Okay. Judge, I
7 think we can do this without the jury. We
8 did not offer -- and I think the state
9 will.

10 MR. POWELL: I have no objection.

11 MR. HARTLEY: We'll call it
12 Defendant's Exhibit 1, but it is also
13 State's Exhibit 26 but you never offered
14 it, did you?

15 MR. POWELL: I never offered it.

16 MR. HARTLEY: It is just marked
17 State's Exhibit Number 1.

18 MS. PERKINS: It's State's 26.

19 MR. HARTLEY: 26.

20 MS. PERKINS: Put a Defendant's 1
21 on there.

22 (Defendant's Exhibit Number 1
23 admitted into evidence.)

24 (The following was held in the
25 presence and hearing of the jury.)

1 E.E. HOWTON,

2 having been previously sworn, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HARTLEY:

6 Q. Thank you for coming back,
7 Officer Howton. Let me pick up with your
8 -- this one matter I would like to ask you
9 about at this point.

10 We have heard testimony since you
11 left the stand from a Nicole Judkins.

12 A. Yes, sir.

13 Q. Are you familiar with who she is?

14 A. Yes, sir.

15 Q. And back at the time of this
16 event, more specifically on February the
17 2nd, 2002, did you take a statement from
18 her?

19 A. Yes.

20 Q. So information from her would be
21 included in your case file in your
22 investigation; is that right?

23 A. Yes.

24 Q. Now, her statement is recorded,
25 of course, and put into paper form as a

1 matter of routine, right?

2 A. Yes, sir.

3 Q. Now, you also prepared, because
4 we have already talked about it, incident
5 reports where you include information that
6 you compiled into this report, right?

7 A. Yes.

8 Q. Let me get you to refer to the
9 same one that I asked you about before, the
10 lengthy report that is dated 2/5/02. Page
11 five. Page five at the bottom.

12 A. Okay.

13 Q. And in this you are referencing
14 information that you obtained from Nicole
15 Judkins, did you not?

16 A. Yes, sir.

17 Q. Would you read the first six
18 lines of that down to the one where the
19 sentence ends with the word ground, and I
20 think you will see that. What did you
21 record as to what she had told you about
22 Darryl Foggy?

23 A. You want me to read this?

24 Q. I would appreciate it.

25 A. Okay. According to Nicole

1 Judkins, she was in the kitchen when a
2 black female she identified as Kesha
3 Billups came in the kitchen area and told
4 her that someone was fighting outside. She
5 stated that she then went outside at which
6 time she observed Eric Stewart, a/k/a
7 Rabbit, and Darryl Foggy, a/k/a D,
8 disappear and the victim James Friendly on
9 the ground.

10 Q. Did you get that information from
11 her?

12 A. Yes.

13 Q. And in that you said that she
14 went outside and named these following
15 people, Eric Stewart and saw Darryl Foggy,
16 right?

17 A. Yes.

18 Q. And then at that -- combined in
19 that sentence, she said Darryl Foggy left
20 the scene, right?

21 A. Yes.

22 Q. Nowhere in there did you record
23 that Darryl Foggy was inside the apartment,
24 did you?

25 A. Not in that particular area, no.

1 Q. I don't think you did anywhere,
2 did you? I'm talking about at the time of
3 the shooting.

4 A. I don't think so, no.

5 MR. HARTLEY: Thank you, no
6 further questions.

7 CROSS-EXAMINATION

8 BY MR. POWELL:

9 Q. Are you trying to deny that
10 initially there were two suspects developed
11 in this case?

12 A. No.

13 Q. And who were those two suspects
14 again?

15 A. Darryl Joyce and Darryl Foggy.

16 Q. And is the information Mr.
17 Hartley keeps pointing out part of the
18 factual basis used to develop Darryl Foggy
19 as a suspect?

20 A. Yes.

21 Q. And is that the same factual
22 information that y'all followed up on?

23 A. Yes.

24 Q. Until the point you recovered
25 State's 21?

1 A. Yes.

2 Q. And I believe Ms. Richart
3 testified that she tested this gun, did she
4 not?

5 A. Yes.

6 Q. And did it match the bullets that
7 were dug out of James Friendly's body?

8 A. No.

9 Q. When you went looking for Darryl
10 Foggy, were you able to find him?

11 A. Yes.

12 Q. When you went looking for Darryl
13 Joyce, were you able to find him?

14 A. No.

15 Q. Where did Darryl Joyce eventually
16 end up?

17 A. Los Angeles, California.

18 Q. And who did you sign warrants on?

19 A. Darryl Joyce.

20 Q. Why?

21 A. Because all the information I had
22 at that point directed the investigation in
23 his direction.

24 MR. POWELL: Nothing further,
25 Judge.

REDIRECT EXAMINATION

BY MR. HARTLEY:

Q. Were the people who were hiding that gun hiding the evidence from a crime scene?

A. Yes.

Q. If somebody picked up those bullets and took them away from the scene, would they be hiding evidence from a crime scene?

A. Yes.

Q. And you have a witness who identified Darryl Foggy positively, according to your records, as the person who did this crime, right?

A. Yes.

Q. And who was that?

A. Mr. Thomas.

Q. Bryan Thomas?

A. Yes.

Q. And he was interviewed at what date on what location?

A. He was interviewed that Saturday and -- what was the other part of that question?

1 Q. Where did you interview him?

2 A. At headquarters.

3 Q. As a result of that, that photo
4 lineup with Darryl Foggy's picture
5 identified on it was generated, right?

6 A. Yes.

7 MR. HARTLEY: Thank you. No
8 further questions.

9 RECROSS-EXAMINATION

10 BY MR. POWELL:

11 Q. Detective Howton, how many people
12 that were outside at that party -- are you
13 familiar that other people showed up after
14 the shooting occurred?

15 A. Well, there were supposed to be
16 numerous people at the party when all this
17 was going on.

18 Q. And after the shooting occurred,
19 waiting on the paramedics, other people
20 started coming out of Smiley Court; is that
21 right?

22 A. Yes.

23 Q. How many of those people said
24 they saw people looking through the grass
25 picking up shell casings?

1 A. Nobody.

2 MR. POWELL: Nothing further.

3 REDIRECT EXAMINATION

4 BY MR. HARTLEY:

5 Q. How many people were asked that
6 question?

7 A. Nobody.

8 MR. HARTLEY: Thank you.

9 MR. POWELL: Nothing further.

10 THE COURT: Is that it? Thank
11 you, sir. Can he be released?

12 MR. HARTLEY: I think we are
13 through, Judge.

14 (Off-the-Record Discussion.)

15 MR. HARTLEY: Judge, that's our
16 last witness so the defense rests. We are
17 going to renew that motion that we made so
18 I want to be sure that's on the Record.

19 THE COURT: Ladies and gentlemen,
20 why don't we do this. Why don't we kind of
21 take a break for an early lunch. Would
22 anybody have a problem being back here at
23 about 12:30? All right. If y'all could be
24 back here at 12:30, we will go to the
25 closing arguments and I will give you the

1 law in the case and we'll turn the case
2 over to y'all. So be back in the jury
3 assembly room at 12:30.

4 Remember, don't talk to anybody
5 about the case. Don't let anybody talk to
6 you about the case. If anybody attempts to
7 talk to you about the case, please let us
8 know. Don't even talk to each other about
9 the case. Okay. Thank you.

10 (Lunch Recess.)

11 (The following proceedings were
12 held outside the presence and hearing of
13 the jury.)

14 THE COURT: Take a look at the
15 verdict form and tell me what you think.

16 MR. POWELL: The state is
17 satisfied with the jury form, Judge.

18 MR. HARTLEY: Satisfied.

19 (The jury enters the courtroom.)

20 THE COURT: Ladies and gentlemen
21 of the jury, we are now through with the
22 trial where the attorneys will make their
23 closing arguments to you. I will remind
24 you that what the attorneys say is not
25 evidence in the case. They will simply try

1 to persuade you that you should vote for an
2 acquittal in the case of the defense or
3 guilty in the case of the prosecution.
4 They will be telling you what they recall
5 the facts of the case to be.

6 You are not bound by the
7 attorneys' recollection of the facts but
8 you should rely on your own recollection if
9 it is different from how the attorneys
10 remember it. Mr. Powell.

11 MR. POWELL: May it please the
12 Court, counsel. Members of the jury, back
13 on February the 1st of last year an
14 argument occurred outside of a birthday
15 party over who was tougher than who or
16 whose set was better than whose set, or
17 whatever the reason the argument occurred.
18 But this man, the defendant, pulled out a
19 gun and shot James Friendly dead.

20 State's 29, that's a photograph
21 of Mr. James Friendly. That's the person
22 who wasn't able to walk away from that
23 argument. In other words, they were
24 arguing over who was the baddest.

25 Unfortunately, it is clear that

1 Mr. Joyce won that argument that night
2 because he jerked out a pistol and shot
3 James Friendly dead over just some words
4 that they were having. Nothing else. This
5 was a senseless act of violence that should
6 never have occurred.

7 But it occurred on that night
8 because this defendant decided to arm
9 himself with a gun, decided to go to that
10 party, decided to keep that gun in his
11 pants where he could get to it at a
12 moment's notice, decided that those words
13 or that argument escalated to the point he
14 was going to kill someone. Then decided to
15 reach into his waistband, pull out that
16 gun, point it at Boo and pull the trigger,
17 not once, not twice, three times. Maybe
18 more.

19 That, members of the jury, is an
20 intentional act. There is no question that
21 the person that pulled the trigger of that
22 gun intended to kill James Friendly.

23 The only issue that has even been
24 brought up in this trial is do we have the
25 right person. Let me be the first one to

1 tell you, if you go back in that jury room
2 and do not believe beyond a reasonable
3 doubt that Darryl Joyce is the man who
4 pulled that trigger, by all means cut him
5 loose. We are not trying to convict an
6 innocent person.

7 But you heard the state's
8 evidence from that witness stand. Eric
9 Stewart was right in the middle of this
10 argument. He was there. The person that
11 was arguing and shooting was not this
12 Darryl Foggy the defense keeps trying to
13 inject into the case. It was that man
14 sitting right there.

15 He was standing in the middle of
16 the two of them trying to stop the argument
17 when he pulled out the gun and shot him
18 dead. There was an eye witness standing
19 within feet of that man as he shot him
20 dead.

21 Now, admittedly, I told you this
22 in voir dire, I told you this in opening
23 statements, he testified to it from the
24 witness stand, it was a party. There was
25 alcohol. There was drugs. That's

1 something to take into consideration. I'm
2 not asking you to convict Darryl Joyce
3 based solely on the testimony of Eric
4 Stewart.

5 Whatever questions you may have
6 in your mind about should I believe Eric
7 Stewart, there is physical evidence and
8 there are other eye witnesses, the Osborne
9 brothers. Particularly, Brian Osborne said
10 when he heard the shot he looked back over
11 his shoulder and saw the fire coming from
12 the gun. He was within feet -- remember,
13 he was on the witness stand and I was
14 standing about right here and he said he
15 saw that man pull the gun, pull the trigger
16 and shoot James Friendly dead.

17 Finally, there is the physical
18 evidence. They all told the story of where
19 the shooting occurred, how it occurred.
20 The shots were on the ground. The shots
21 went into the truck. There are photographs
22 of the truck. You see the shell casings.
23 All of it is consistent with the story that
24 the eye witnesses told.

25 That story is plain and it is

1 simple, that that man sitting right over
2 there got into a senseless argument at a
3 party and decided to pull a gun and shoot
4 somebody dead. That's what happened in
5 this case. That's what all of the evidence
6 has pointed to. Thank you.

7 MR. HARTLEY: Thank you, Your
8 Honor and Counsel. Good afternoon, members
9 of the jury. I sure want to thank you for
10 participating in our case. The role that
11 the jury plays is so important. I won't
12 belabor it. It is just essential that we
13 have a system like we have. Ultimately
14 cases are -- civil and criminal cases are
15 handed to a jury and y'all are vested with
16 a very heavy responsibility of doing a
17 compound task of deciphering the facts and
18 applying them to legal standards.

19 Judge Hobbs will give you some
20 legal standards a little later that apply
21 to this case and all criminal cases. He
22 will give you a burden of proof type jury
23 instruction. He will give you the elements
24 of the offense of the general charges that
25 go with you back to the jury room. You do

1 not get written charges so you will have to
2 memorize this as it goes.

3 With all that being said, you
4 gave an oath to be the jury in this case
5 and you were summoned down here. I hope
6 you weren't too inconvenienced. But this
7 is so important. This is a major important
8 case. All of them are important but this
9 one is important because it is the one we
10 are doing today. It involves serious
11 charges.

12 I preface that to say that you
13 are going to be applying a standard of
14 proof beyond a reasonable doubt. The Judge
15 will give you a definition of that, but I
16 want to mention to you that that standard
17 -- it is sort of unique to criminal cases
18 in the legal system, and that standard is
19 sort of an interesting concept because
20 y'all are going to have to decide what
21 beyond a reasonable doubt is.

22 I suggest to you it is a pretty
23 high standard. We make decisions every day
24 in our lives. I will try to use the
25 example of people decide virtually every

1 day where they go to lunch or what they are
2 going to do for lunch. Some days you go
3 get a good lunch and some days you may pick
4 out some place where the lunch wasn't so
5 good and you reflect back on it and you
6 say, you know, I wish I hadn't gone to that
7 place. But you didn't really ponder on it
8 real hard before you did it. Maybe on
9 impulse you did it.

10 You applied a standard of
11 probably just say there is a preponderance
12 of my grounds for going to restaurant A or
13 restaurant B or whatever. That's just one
14 of the decisions we make in routine
15 everyday life and we don't apply a beyond a
16 reasonable doubt standard to such
17 decisions.

18 But when things get real, real,
19 real important, we apply a standard that is
20 more like beyond a reasonable doubt. I
21 think an example of that might be if you or
22 somebody -- and I'm not going to make you
23 particularly, but I'm talking about you in
24 the general sense.

25 If you or a person is going to

1 face maybe some kind of major surgery and a
2 doctor told them -- told you that you could
3 take this major surgery and your problem
4 might be cured, but on the other hand, the
5 downside is you might not survive the
6 surgery.

7 That's when you start getting to
8 the situation where you put more weight
9 into the decision and you might take in
10 more factors. You might take in a second
11 opinion. You might go see another doctor
12 or research the topic yourself or put some
13 tremendous amount of deep thought into it.

14 That's more of the kind of
15 decision we are making now is the weight of
16 this. The gravity of this matter is so
17 high that the standard of proof is very
18 high -- or the burden of proof is very high
19 and the standard of proof is very high
20 because the consequences are great,
21 somewhat like it would be if you were
22 facing major surgery. So I try to make
23 that differentiation so you can see how
24 important it is.

25 But let's go to this case now.

1 He is presumed innocent. You will hear a
2 charge on that. I will submit to you that
3 the state hasn't proved him guilty of
4 anything because the quality of their
5 evidence is not that good.

6 I got several areas I want to go
7 into, and I apologize that I'm not the most
8 organized person but I'm going to try to go
9 to them. One of the things I mentioned in
10 my opening was that one of the things you
11 are going to need to take into
12 consideration is the overall -- what did we
13 call it -- I think I called it the
14 circumstances or the conditions that
15 night.

16 I'm going to submit to you the
17 state got in a lot of exhibits and they got
18 in a good bit of testimony, but I really
19 like these two exhibits. Now, I know and
20 I'm going to admit that a picture can't
21 always capture what a scene looks like, but
22 I submit to you that these are original
23 photographs because they portray a very
24 dark area, and I think these are more like
25 the scene than, for instance, this

1 picture. I ask you to keep that in mind
2 because it happened at 11:30 or a quarter
3 to 12:00. It happened way up close to
4 midnight.

5 The significance or the
6 importance of that is it goes to all this
7 testimony about who saw what and what they
8 were able to observe. I think that the
9 witnesses that the state tried to use
10 overstated what could be seen and what
11 could actually be observed.

12 I'm going to try to establish
13 that by -- let's use Eric Stewart, the
14 first witness, I think, whom we'll say that
15 his testimony or his ability to recall and
16 accurately testify in this case would be
17 affected by his alcohol use, his use of
18 cocaine on that evening, and I think that
19 it is illustrated by the way he changed his
20 statement when I cross-examined him and
21 tried to pin him down on where the first
22 shots were fired. I think Eric Stewart was
23 all over the place. Three different
24 versions: One time in the ground, one time
25 in the back of the truck, and another time

1 he shot the victim.

2 If he is such a spectacular or
3 stellar eye witness, as Mr. Powell wants
4 you to believe, then how could he account
5 for such inconsistencies in his statement.
6 He tried to implicate Darryl Joyce, but he
7 also told us that he was very close friends
8 with Darryl Joyce, that they had been
9 raised together or they had been friends
10 for a very, very, very long time.

11 I submit to you an overview of
12 the evidence in this case would show that
13 there could be a loyalty to Darryl Foggy --
14 I hope I didn't get the Darryls mixed up
15 -- a loyalty to Darryl Foggy that would be
16 strong enough for him to lie to him. I
17 think that is verified by this episode of
18 this gun being at the scene and then moved
19 to the apartment.

20 Now, of course, he tried to
21 disavow that he participated in hiding that
22 gun, but I will suggest to you that raises
23 two questions. If he didn't participate in
24 hiding the gun then why did Detective
25 Howton write in his report these exact

1 words, it's an open question as to why Eric
2 Stewart aided in hiding the gun. You heard
3 Mr. Howton say that he put that in his
4 report.

5 And the second or the same
6 related question is, if he didn't
7 participate in hiding the gun, how did he
8 no where it went and how did he know how to
9 send Detective Howton to find the gun if he
10 didn't know or have knowledge of it being
11 hidden and where it was hidden.

12 I believe that Eric Stewart's
13 testimony falls or fails for that reason to
14 make any kind of proof beyond a reasonable
15 doubt.

16 Now, let me go to two other
17 witnesses I found interesting in this
18 case. The Brian Osborne and Johnny Osborne
19 witnesses, who, if you don't really analyze
20 their testimony, seem like they really --
21 really were on the ball on the testimony.
22 But I watched this and I'm sure y'all saw
23 it, too. It was when Johnny Osborne was
24 testifying, the state -- I'm not going to
25 change it -- I'm going to use this

1 -- projected this up on there. I guess I
2 might could do it.

3 (Off-the-Record Discussion.)

4 Well, I'm going to point because
5 I might get confused. I will just point.
6 It won't take but a second. The testimony
7 from Johnny Osborne was that the event took
8 place on this side, or more particularly,
9 if he didn't -- wasn't specific about the
10 other side. I recall exactly that this is
11 where Eric Stewart said it was. He
12 described all the events, they had come out
13 of this apartment and that he and James
14 Friendly were right over in here to use
15 drugs or to have their conversation or
16 whatever.

17 But then when we got to Brian
18 Osborne, he moved it over to this side.
19 That's real interesting because it creates
20 a question now about who could see the
21 best. We don't know which side -- both of
22 them can't be correct. It can't be over
23 here, it can't be over here. I don't think
24 it can be in both places.

25 It is interesting that the shell

1 casings -- I think they said the shell
2 casings from all the other testimony were
3 found in this area, which would not resolve
4 which side of the cut or this alley they
5 were in. But then you put in this area
6 right here where this car was, the Osborne
7 vehicle, a Jeep-type vehicle, it looked
8 like, backed into the parking place.

9 Brian Osborne starts testifying
10 -- if we just use this -- I will use this
11 if I can do it one more time right. Let's
12 use this hypothetically as the Jeep and
13 let's consider the front or back or
14 -- let's presume this is the front of the
15 Jeep and the back would be away from it.

16 If the shooting and all this
17 activity took place over here, then the
18 driver's side of the Jeep would have the
19 better opportunity to observe because that
20 person wouldn't be able to see over here.
21 Again, and if it occurred over here, then,
22 of course, Mr. Brian Osborne who said he
23 was getting in the passenger side would
24 have been able to observe what happened
25 here but that completely contradicts Eric

1 Stewart's testimony. So we can't have
2 Brian Osborne's testimony that it happened
3 over here and Eric Stewart's testimony that
4 it happened -- Brian Osborne and Eric
5 Stewart who said it happened over here.
6 Those things are totally inconsistent.

7 And if the state thinks that you
8 should reject Brian's testimony that it
9 occurred over here and go with the fact
10 that it took place over here, then that
11 gives Johnny Osborne the better opportunity
12 to observe. All this clouds the issue of
13 what really happened out there because
14 Brian Osborne is positive that there were
15 three people out there. Johnny Osborne is
16 positive that there were four or five
17 people out there.

18 So which one is it? And I am
19 sure the state would not say that that is
20 an immaterial point. I think it would be
21 of huge importance, who had the opportunity
22 to observe when you talk about Brian or
23 Johnny Osborne, because we have got
24 different stories about where the whole
25 thing happened.

1 It's undoubtedly dark out there,
2 undoubtedly some confusion as to who and
3 what position, et cetera, and that kind of
4 stuff. Now, this all comes from the
5 state's evidence. This does not -- this
6 was their witnesses. Oh, yeah.

7 Let me go to something now.
8 Let's go to Mr. Howton. What did Mr.
9 Howton add to this case that we suggest
10 substantiates a reasonable doubt theory in
11 this case. He verified for us that he had
12 a witness who came in the morning after it
13 happened and was asked if he could identify
14 the person who did this -- committed this
15 crime. This photo lineup was used, and a
16 person named Bryan Thomas identified that
17 individual right there as being the
18 shooter. Remember the report was he
19 positively identified him. That's Darryl
20 Foggy. That's the person who was at the
21 scene that night.

22 I will go back to that in a few
23 minutes when I have a little theory I want
24 to give you about this case. But also he
25 did some other things that I think I have

1 already alluded to, the fact that he noted
2 that there was -- I made a reference that
3 he -- a reference that said there was an
4 open question about why Eric Stewart had
5 gone and hidden the gun. I think Eric did
6 in fact hide the gun or participate in
7 hiding it.

8 Another place that Mr. Howton
9 contributed to this issue of what really
10 happened or is this case against Darryl
11 Joyce that strong, he also took a little
12 bit away from Ebony Judkins' testimony.
13 She was trying to be so emphatic that she
14 was trying to place Darryl Foggy back in
15 her apartment at the time she heard the
16 shots but she didn't particularly make that
17 so clear in her statement.

18 But we asked Mr. Howton, the last
19 witness we called, the only witness we
20 called, to go back to his incident report,
21 and he said that she had told him that she
22 came out and saw Eric Stewart, a/k/a
23 Rabbit, and Darryl Foggy, a/k/a D, fleeing
24 from the scene. That's an odd way to put
25 it if he had just been inside with her. It

1 just sort of creates an issue as to --
2 there was a real possibility that Darryl
3 Foggy was out there when the action was
4 going on and she is just now covering for
5 him as a matter of friendship or loyalty to
6 him.

7 There is not a single photo
8 lineup like this in this case that
9 identifies Darryl Joyce being the shooter
10 in this case. There are some people that
11 identify him as being a person but nobody
12 picked him out of a six-person lineup like
13 that and said he did it. The state is not
14 offering one of these with Darryl Joyce's
15 picture in it.

16 Let me tell y'all, as I close my
17 statement to you, that I think if I -- I
18 haven't drawn this yet so I'm going to give
19 it a shot. I'm going to characterize this
20 case as being an incomplete or sort of a
21 curtailed investigation. Let me see if I
22 can represent this -- I should have already
23 drawn it, but I'm going to do it if I can.
24 I'm going to think of the investigation of
25 this case was sort of like a travel or

1 going down something like maybe a highway
2 from the standpoint of trying to get from
3 point A, which is the -- when the event
4 occurred, when James Friendly was killed,
5 and trying to get to -- I'm going to call
6 it an S for solution.

7 Here is what I think the state
8 did in its course. It went along for a
9 while. Then right after the event occurred
10 -- of course, you have the possibility of
11 where it branches like this in the course
12 of the investigation, and it might branch
13 even more times. It might branch again and
14 it might be another branch over here, and
15 the size or the shape of the branches I'm
16 not trying to emphasize because there are
17 multiple suspects.

18 What I think happened is when
19 this case got going -- let me correct that
20 just a little bit -- the state had a -- or
21 the investigation in this case led directly
22 at one point to Darryl Foggy by an eye
23 witness who said that he positively
24 identified this person as being a suspect
25 -- being the person who perpetrated the

1 crime, who actually did it.

2 And the state had that evidence,
3 and we still have it with us today. But
4 when these other people who had, we will
5 submit, reasons to possibly protect him
6 came along, the state went up this path
7 which they say tries to lead to Darryl
8 Joyce. And what they did was, whatever
9 reason -- you know, they weren't satisfied
10 they had an eye witness who said they did
11 it. They just cut this off. This just
12 sort of goes like that, boom.

13 Then they go down this path and
14 they try to stay on this path to hope
15 Darryl Joyce did it but on what grounds or
16 what evidence? The very weak evidence of
17 Eric Stewart who was a druggie, a convicted
18 felon, and then possibly one other witness,
19 Mr. Osborne, who has some serious
20 inconsistencies and conflicts in his
21 statement. And that's all they have got.

22 But they never went very far down
23 this path. In other words, once they got
24 -- they had it sort of as a possibility or
25 a probability that this man was involved in

1 the case, and it just stopped right there.
2 Boom. And the only way it comes back up
3 again is because I bring it back into this
4 case about Darryl Foggy who had a gun.

5 Apparently, he is the kind of
6 person who would be involved in a crime
7 like this. And how do we know that this
8 gun is not a decoy gun or a fake gun
9 against somebody to give somebody an
10 alibi. How do we know that this wasn't a
11 plan, a false gun planted.

12 Are you sure -- Eric Stewart sure
13 volunteered it mighty quickly. He sure
14 came up with it in a heartbeat. We'll lead
15 you to a gun, a decoy gun. Not the gun
16 that committed the felony but, hey, it sure
17 gave Darryl Foggy an out. So why did he
18 even tell about it if it was zero or
19 immaterial to the case.

20 So mainly the state's case failed
21 because they didn't pursue this branch of
22 their course of conduct and focused too
23 narrowly on this branch.

24 Now I submit to you that that
25 creates reasonable doubt, serious

1 reasonable doubt that Darryl Joyce did not
2 commit that crime. He had no motive. I
3 know the state said it was all about an
4 argument. Well, we don't know who was
5 arguing with who out there because of these
6 pictures, State's Exhibit Number 1 and
7 State's Exhibit Number 5.

8 And by the way, there is a --
9 some evidence in this case that somebody
10 was cleaning the gun shells off the ground
11 out there after it happened. It wasn't my
12 client, he was gone. You know, there is
13 more to this story that has been found or
14 has been told and it is not sufficient to
15 carry this case to the verdict that the
16 state is going to ask you for. Too many
17 unanswered questions, too many mysterious
18 deadends that don't go anywhere and don't
19 resolve themselves.

20 And I think very importantly the
21 fact that the two Osbornes got the shooting
22 on the wrong side of the -- on opposite
23 sides of this little alley way. And that's
24 -- in and of itself it appears to be
25 insignificant but it is not because you

1 have got to think about it, which one was
2 on which side of the vehicle. The vehicle
3 was backed in, what perspective would the
4 driver have, what perspective the passenger
5 would have, and how much light did they
6 have to see what they said they saw.

7 A big discrepancy on how many
8 people. Brian Osborne was essentially
9 positive there were three and his brother
10 was essentially positive there were four or
11 five people out there. I believe you
12 probably clearly understand my argument. I
13 submit to you that the jury -- that this
14 jury -- you should find Mr. Darryl Joyce
15 not guilty.

16 We want again to say that we
17 appreciate you being the jury. If we have
18 done anything during the course of the
19 trial -- if we jump up and object
20 sometimes, and we have to, we are not
21 trying to be as bad as you might think we
22 are. It is what we think the legal rules
23 require and that kind of thing. So if we
24 did anything that looked awkward or
25 inappropriate, hold that against me, not

1 against him. He has exercised his right
2 not to testify.

3 I think that's all I wanted to
4 say. I might glance at my notes but that's
5 really about all I can think of in this
6 case from the evidence. You have heard it,
7 and I will leave it with you, but I will
8 ask you to find Darryl Joyce not guilty.

9 MR. POWELL: Mr. Hartley and I
10 certainly agree that at the initial stage
11 of this investigation there was a fork in
12 the road. The case of the two Darryls, if
13 you will. They interviewed one set of
14 witnesses and they were all identifying
15 Poncho or Darryl Joyce.

16 There was some indication that
17 another Darryl was at the party, and
18 another Darryl may have had a gun. So
19 let's look at what the police did. First
20 off, the only person -- I mean, there is no
21 dispute that Darryl Foggy was at this
22 party. I don't think anybody is arguing
23 that. But has a single witness in this
24 case ever said that Darryl Foggy was
25 outside or that he was in any manner

1 involved in this incident. There has been
2 absolutely no testimony from this witness
3 stand about that at all.

4 All you know is that someone
5 named Bryant Thomas identified Darryl Foggy
6 from a photo lineup. When you are deciding
7 and discussing this in the back, I want you
8 to ask some questions. Where was Darryl --
9 where was Bryant Thomas when the incident
10 occurred? Where was he standing? Was he
11 even still at the party?

12 Eric Stewart, in some other
13 testimony, indicated that he was there but
14 he left. Was he saying that he was the
15 shooter or was he saying that he was at the
16 party? We know nothing about Bryant Thomas
17 other than he identified someone named
18 Darryl Foggy from a photo lineup.

19 There is no evidence about his
20 vantage point, where he was standing, what
21 he saw, nothing. Yet the defense wants you
22 to base a reasonable doubt on unanswered
23 questions and innuendo that is not based on
24 evidence.

25 What about Nicole Judkins? What

1 did she say? She hosted a party. She saw
2 Darryl Foggy there. She saw him with the
3 gun. She didn't think he was involved in
4 the shooting, and he elicited some
5 testimony from Detective Howton that after
6 everything was over with he saw Eric
7 Stewart and Foggy out there with the body
8 and they left.

9 Well, that is entirely possible.
10 I think all the other witnesses indicated
11 after it was over with, Eric Stewart
12 remained with the body until the paramedics
13 got there and he left. That is not
14 evidence that Darryl Foggy shot anybody.
15 But nonetheless, Detective Howton had his
16 name. He had the name of Darryl Joyce and
17 he had the name of Darryl Foggy.

18 So what did he do? Did he just
19 stop the investigation as Mr. Hartley
20 indicates? No. He wanted to know, okay,
21 if he had a gun at the party that night,
22 where is the gun? Where is this hidden gun
23 the defense has talked about so much?

24 It is across the street, members
25 of the jury. It is not hidden. It is in

1 an apartment directly across the street
2 from where the shooting happened. Now, if
3 you were going to hide a gun, does that
4 make a whole lot of sense to leave it
5 within ten yards of where the shooting
6 occurred.

7 Detective Howton is able to get
8 this gun. This is the gun in question,
9 State's 21. There has been no evidence to
10 the contrary. Mr. Hartley got up here and
11 told you some wild theory about a planted
12 gun or a gun used to mislead somebody.
13 That's what Mr. Hartley said in closing
14 argument. Find one witness that said
15 anything to support that. One fact, one
16 shell casing, anything to support that.

17 Judge Hobbs is going to tell you
18 what Mr. Hartley said, even what I'm saying
19 now, is not evidence. So a wild
20 speculation by the defense attorney. This
21 is the gun. Why does he want you to
22 believe it is not the gun, because Kathy
23 Richart, the forensic expert, tested this
24 gun. She tested this gun against those
25 three shell casings that were picked up at

1 the scene.

2 After the shooting occurred, they
3 went and picked up the casings that were in
4 that cut where it occurred, regardless of
5 which side it was on. And it didn't match
6 this gun.

7 When Dr. Bristol performed the
8 autopsy, one of the bullets was still in
9 Boo's body. They got it out. They tested
10 it. It didn't match this gun. The
11 so-called hidden gun theory did not match
12 the evidence. We still, to this day, do
13 not have the murder weapon.

14 We found Darryl Foggy's gun. We
15 still have not found the gun that was used
16 to kill James Friendly, which makes a whole
17 lot more sense that the person that used a
18 gun to kill someone isn't going to just
19 leave it across the street where the cops
20 can find it. They are going to ditch it
21 where nobody can find it because they don't
22 want it found.

23 Well, let's talk about what else
24 was and was not found in this case, members
25 of the jury. First off, Darryl Foggy was

1 Smiley Court all the way to California if
2 they didn't have the lick of nothing to do
3 with who shot James Friendly. That's
4 evidence. That's evidence of consciousness
5 of guilt, all that running away.

6 Darryl Foggy never left. They
7 found him right here in Montgomery. They
8 found his gun. They talked to him. The
9 eye witnesses never put him involved, so
10 this fork in the road was a dead end. He
11 didn't do it. The forensic evidence says
12 he didn't do it. The ballistics evidence
13 says he didn't do it. There are no eye
14 witnesses saying he had anything to do with
15 it. Nothing in the case points to Darryl
16 Foggy.

17 But everything in the case points
18 to Darryl Joyce. Did the police take that
19 fork in the road? You bet they did. They
20 followed it for Foggy and came up with
21 nothing. Came up with evidence that said
22 he didn't do it.

23 They followed it for Joyce and
24 the more and more and more they found.
25 Eric Stewart. And if you don't believe

1 Eric Stewart, there is Brian Osborne. If
2 you don't believe Brian Osborne, you got
3 two people telling the same story about an
4 argument and Darryl Joyce pulling a gun.
5 It is hard to make those stories match,
6 members of the jury, if it didn't happen.

7 Then if that's not enough for
8 you, the shell casings were found in that
9 cut where they said the shooting occurred.
10 Johnny Osborne testified that it happened
11 just the way everyone else said it
12 happened.

13 In that cut, there was an
14 argument. Darryl Joyce was arguing with
15 Boo over who was the baddest, who was the
16 toughest, who could do this or who could do
17 that, and he was going to prove to James
18 Friendly once and for all who won that
19 argument, and he did it by pulling out a
20 gun and shooting him dead over nothing.
21 Over nothing.

22 Now, the last thing I'm going to
23 say to you is the Judge is going to read
24 you the law. He is going to read you the
25 law on intentional murder. That's what

1 happened in this case, members of the
2 jury. And to meet our burden of proof
3 beyond that reasonable doubt, the same
4 standard that is used in all criminal
5 cases, we have got to prove to you that
6 James Friendly is dead.

7 I think we know that. He was
8 shot to death. All the evidence in the
9 case points to one person. It doesn't
10 point to Darryl Foggy. It points to this
11 man on trial today, Darryl Joyce. James
12 Friendly is dead.

13 Number two, that the defendant,
14 Darryl Joyce, caused the death of James
15 Friendly by shooting him with a gun, and
16 that in committing the act which caused the
17 death of James Friendly, the defendant
18 acted with intent. A person acts
19 intentionally when it is his purpose to
20 cause the death of another person. That's
21 technically how the law is going to read
22 and what you are going to hear from the
23 Judge.

24 The State of Alabama has met
25 every one of those elements. James

1 Friendly is dead. Darryl Joyce did it. We
2 proved he did it beyond a reasonable doubt,
3 and he did it with intent. Members of the
4 jury, he is guilty of intentional murder.
5 Thank you.

6 THE COURT: Ladies and gentlemen
7 of the jury, we are now at the point in the
8 trial where I tell you what the law is
9 regarding the deliberations in this case.
10 Please listen carefully as I explain it to
11 you. It is going to take a little bit of
12 time to get through it.

13 This case is brought to you by
14 way of an indictment in this case. Let me
15 read the indictment to you real quickly.
16 The State of Alabama, Circuit Court of
17 Montgomery County, November term of 2002,
18 the Grand Jury of said county charges that
19 before the finding of this indictment,
20 Darryl Joyce, whose name is otherwise not
21 known to the Grand Jury, did intentionally
22 cause the death of another person, James
23 Friendly, by shooting him with a gun in
24 violation of section 13A-6-2, Code of
25 Alabama.

1 The indictment has no bearing on
2 the guilt or innocence of any person. Keep
3 that in mind. That's just the way that the
4 case gets to this Court. Now, the
5 defendant, to that charge, has pled not
6 guilty. The plea of not guilty places the
7 burden on the State of Alabama to prove by
8 the evidence presented the guilt of Mr.
9 Joyce beyond a reasonable doubt.

10 Before a conviction can be had,
11 each of you must be satisfied beyond a
12 reasonable doubt of Mr. Joyce's guilt.
13 Otherwise, he is entitled to an acquittal.
14 We've talked about the presumption of
15 innocence.

16 The defendant is presumed to be
17 innocent of the offense of murder and that
18 presumption attends him until his guilt is
19 established from the evidence beyond a
20 reasonable doubt. This presumption is
21 evidence in the case. It is to be
22 considered by you along with the other
23 evidence in the case. It is a fact which
24 is to be considered by you and goes with
25 the defendant to your verdict unless the

1 evidence convinces you beyond a reasonable
2 doubt of the proof of each and every
3 element of the charge.

4 We talk about reasonable doubt.
5 Let me try and explain that for you. The
6 state's burden of proof in this case is a
7 stricter, heavy burden but it is not
8 necessary that the defendant's guilt be
9 proved beyond all possible doubt. It is
10 only required that the state's proof
11 exclude any reasonable doubt concerning the
12 defendant's guilt.

13 A reasonable doubt is a real
14 doubt based upon reason and common sense
15 after careful and partial consideration of
16 all the evidence in the case. Proof beyond
17 a reasonable doubt, therefore, is proof of
18 such a convincing character that you would
19 be willing to rely and act upon it without
20 hesitation in most important of your own
21 affairs. If you are convinced the
22 defendant has been proved guilty beyond a
23 reasonable doubt, say so. If you are not
24 convinced, say so.

25 As I told you at the beginning of

1 this case, y'all are the sole judges of the
2 evidence. I am going to explain to you
3 again what is and is not evidence. The
4 indictment that I read to you is not
5 evidence. The arguments, statements and
6 assertions of the attorneys in this case
7 are not evidence. Any rulings that I make
8 in this case are not evidence. Please
9 don't get caught up in, well, I think the
10 Judge is leaning this way or he overruled
11 that side's objection, he must be favoring
12 -- hu-huh. I'm like the referee. I'm
13 totally neutral in this case.

14 Please don't speculate as to what
15 might have happened if I had allowed in
16 some evidence or I had not overruled --
17 overruled an objection or something like
18 that because that gets us back into
19 speculation. We want you to decide the
20 case based on the evidence. The evidence
21 in the case is the testimony of witnesses
22 from the witness stand. It is what you
23 heard from the witness stand by people
24 under oath. Okay? It is also any exhibits
25 that we allowed into the case. Finally, it

1 is the presumption of innocence. We have
2 talked about that.

3 Your job -- one of your jobs in
4 this case will be to try and decide what
5 the evidence in the case is. It is to
6 decide the credibility of the witnesses in
7 the case. You are the sole exclusive
8 judges of the credibility of witnesses and
9 the weight that should be given to their
10 testimony.

11 In deciding to pass on the
12 credibility of a witness, you have the
13 right to consider, number one, any bias,
14 interest or prejudice that may have been
15 exhibited to you while that witness
16 testified. Number two, the demeanor of the
17 witness on the stand, that is, how did they
18 appear to act while they testified. Number
19 three, the witness's basis for testifying,
20 that is, how did that witness know the
21 facts that he or she testified to, whether
22 they had an opportunity to observe and
23 discern and know those facts.

24 You may accept or reject any part
25 of the testimony of a witness and you

1 should accept only that part of the
2 testimony that you consider worthy of
3 belief. In other words, if you think a
4 witness was not being completely candid
5 with you, you can accept that part that you
6 think the witness was being candid or you
7 can reject the witness's testimony in its
8 entirety. That's up to you to decide.

9 The defendant in this case has
10 chosen not to take the stand. As I told
11 you earlier, he is presumed to be innocent
12 and he is not required to prove his
13 innocence and he is not required to take
14 the witness stand. He has a constitutional
15 right not to testify in this case, and you
16 should not infer anything prejudicial
17 whatsoever because he has not testified.

18 I charge you that flight from the
19 scene can be inferred by you as a guilty
20 state of mind. Let me talk to you a little
21 bit about the elements of intentional
22 murder. Mr. Joyce is charged with murder.
23 A person commits the crime of murder if he
24 causes the death of another person and in
25 performing the act or acts which caused the

1 death of that person, he intends to kill
2 that person. To convict, the state must
3 prove beyond a reasonable doubt each of the
4 following elements of murder: Number one,
5 that Mr. Friendly is dead. Number two,
6 that Mr. Joyce caused the death of Mr.
7 Friendly by shooting him; and number three,
8 that in committing the act which caused the
9 death of Mr. Friendly, Mr. Joyce acted with
10 intent.

11 A person acts intentionally when
12 it is his purpose to cause the death of
13 another person. If you find from the
14 evidence that the state has proved beyond a
15 reasonable doubt each of the above elements
16 of the offense of murder as charged then
17 you shall find the defendant guilty of
18 murder. If you find that the state has
19 failed to prove beyond a reasonable doubt
20 any one or more of the elements of the
21 offense of murder, then you cannot find the
22 defendant guilty of murder.

23 In a moment we are going to ask
24 you to go back here in this jury
25 deliberation room and begin your

1 deliberations. When you consider the
2 evidence in reaching your verdict, you have
3 the right to use your knowledge of people
4 and their affairs. That's what we call
5 common sense. It is more than your right
6 to use your common sense. We ask you to
7 please use your common sense. That's why
8 we've got y'all here to begin with.

9 Do not let sympathy, prejudice or
10 emotion influence your verdict. Do not
11 base your verdict upon any preconceived
12 ideas of what would be a popular or
13 unpopular verdict. As you know, your
14 verdict must strictly be based on the
15 evidence presented and the law that applies
16 to the case.

17 Also, I want to explain to you
18 that before you can reach a verdict, all
19 twelve of you must agree on that verdict.
20 It cannot be a split verdict, it must be
21 unanimous. In a moment when you go back to
22 the jury room, the first thing you need to
23 do is select a person to act as your
24 foreperson. That person has no greater
25 weight in your deliberations than anyone

1 else. That person is simply going to act
2 as your spokesperson.

3 I also notice that some of y'all
4 have taken notes, and that's fine. I
5 encourage that. I have no problem with
6 that. Just because someone has something
7 written down as a note doesn't mean that
8 that's exactly the way it happened. Rely
9 on -- each of y'all has a say on what goes
10 on back there. If your recollection
11 differs from someone else's notes, the fact
12 that someone took a note doesn't
13 necessarily make it so. Y'all need to talk
14 it out and arrive at the true facts of the
15 case.

16 In the course of your
17 deliberations you may have a question. If
18 you do so, knock on this door that is
19 around on this side. Someone from my
20 office will come answer the door. Write
21 down your question on a piece of paper.
22 We'll do our very best to answer the
23 question. I can promise you one thing, we
24 won't ignore your question. However, I
25 don't think I can promise -- I may not be

1 able to answer your question. Let me just
2 kind of give you this little test. If it
3 is a question about the facts of the case,
4 what a witness said or something like that,
5 I probably will not be able to help you.
6 That is your job to decide the facts. If
7 it is a question about the law, I may well
8 be able to help you. My role is more with
9 the law. But if you have a question, write
10 it down on a piece of paper, knock on
11 door. We'll come and get you.

12 When you reach a verdict, have
13 your -- knock on the door. We'll come and
14 get you. Have your -- you need to fill out
15 this verdict form. The verdict form -- I
16 don't know how well you can see this, but
17 it says, we, the jury, find the defendant
18 guilty of intentional murder as charged in
19 the indictment. Or, second part. We the
20 jury find the defendant not guilty. Check
21 here if you find the defendant guilty, here
22 if you find the defendant not guilty. Have
23 your foreperson print his name. The
24 foreperson signs it. Dates it. Knock on
25 this door. Again, we'll come and get you.

The reason we put an alternate on the jury is you never know when someone is going to have a family emergency or become ill or something. If that were to happen, we would have to start all over. So that's why we have an alternate. I hope you understand, and we do appreciate your being here. I'm going to send you back. Let you begin your deliberations. Ms. Shelton will bring the exhibits back to you in just a

1 second.

2 (The jury begins their
3 deliberations.)

4 THE COURT: Just note on the
5 record the parties -- both parties are
6 satisfied with the charge.

7 (Brief Recess.)

8 (The following proceedings were
9 held outside the presence and hearing of
10 the jury.)

11 THE COURT: Let me have
12 everybody's attention while we are waiting
13 for everybody to get here. When the jury
14 gives their verdict, I don't want there to
15 be any outbursts in this courtroom. I
16 don't want there to be any noise. I don't
17 want there to be any amens, hallelujahs or
18 regrets or anything else. If you cannot
19 restrain yourself when the verdict is going
20 to be read, go ahead and leave now.
21 Otherwise, we are going to be spending some
22 extra time with you this afternoon.

23 When the verdict is read, the
24 Friendly family and their friends are going
25 to leave the courtroom first. Then we are

1 going to let the jury leave. Then we will
2 let the Joyce family leave. I'm not going
3 to have altercations or anything in this
4 courthouse. If there is anybody that can't
5 handle that, leave now and get out of the
6 courthouse. Okay?

7 (The jury enters the courtroom.)

8 THE BAILIFF: Be seated.

9 THE COURT: Ladies and gentlemen,
10 I understand y'all have reached a verdict?

11 THE FOREPERSON: Yes, sir, we
12 have.

13 THE COURT: I will read the
14 verdict form that you just handed me. In
15 the Circuit Court of Montgomery County,
16 Alabama, the State of Alabama versus
17 defendant Darryl Joyce. We the jury find
18 the defendant guilty of intentional murder
19 as charged in the indictment. Is that
20 y'all's verdict?

21 THE FOREPERSON: Yes, it is, Your
22 Honor.

23 THE COURT: Okay. MR. HARTLEY:
24 We ask for a poll of the jurors.

25 (At which time the Court polls

1 the jury.)

2 THE COURT: The Court will enter
3 an adjudication of guilty on the charge of
4 murder in this case. Ms. Friendly, if you
5 want to leave with your family and friends
6 right now, I would appreciate that.

7 (Parties leaving the courtroom.)

8 THE COURT: Members of the jury,
9 I appreciate your service. It was a
10 difficult case, I understand. I appreciate
11 y'all hanging in there with us these two
12 days. The only good news I can give you is
13 you are released for the rest of this day.
14 You need to call code-a-phone tonight and
15 they will let you know if you need to be
16 back in the morning or not.

17 Again, every Judge, everybody
18 that works here at the courthouse deeply
19 appreciates y'all doing your civic duty of
20 coming down here and giving us your time.
21 Thank you. If y'all will go back this way,
22 the deputy will take y'all out of the
23 courthouse.

24 (The jurors exit the courtroom.)

25 THE COURT: Wiley, you need to

1 apply for a presentence report, and we will
2 do the sentencing on August 18th.

3 MR. POWELL: Judge, did you
4 accept the verdict and adjudicate Mr. Joyce
5 guilty?

6 THE COURT: Yes, I did.

7 MR. POWELL: At this point, just
8 for the Record, the State is putting the
9 Court on notice of three prior felony
10 convictions for the purpose of the Habitual
11 Felony Offender Act.

12 THE COURT: Anything else here
13 today? The Court is in recess.

14 (COURT ADJOURNED.)

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1 IN THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR MONTGOMERY COUNTY
3 MONTGOMERY, ALABAMA
4

5 STATE OF ALABAMA,

6 Plaintiff,

7 VS.

CRIMINAL ACTION

8 DARRYL J. JOYCE,

NO. 02-1417

9 Defendant.
10 -----/

11 COURT REPORTER'S TRANSCRIPT OF SENTENCING

12 AUGUST 18, 2003

13 MONTGOMERY COUNTY COURTHOUSE

14 COURTROOM 3-A
15

16 BEFORE: THE HON. TRUMAN M. HOBBS, JR.

17 CIRCUIT JUDGE
18

19 APPEARANCES

20 FOR THE STATE:
21 WILLIAM POWELL, ESQUIRE
22 DEPUTY DISTRICT ATTORNEY
MONTGOMERY, ALABAMA

23 FOR THE DEFENDANT:
24 J. WILEY HARTLEY, ESQUIRE
MONTGOMERY, ALABAMA
25

* * * * *

1
2 THE COURT: Wiley, do you want
3 a formal sentencing hearing?

4 MR. HARTLEY: Judge, this might
5 rise to the level of a formal sentencing
6 hearing. We want to have an opportunity
7 for Mr. Joyce to speak if he is inclined
8 but we definitely want to have some
9 testimony from his mother -- and I'm
10 sorry, I will have to get you to
11 introduce this person to the Court, if
12 you would.

13 MS. PATTERSON: I'm Pat
14 Patterson. I'm his aunt.

15 MR. HARTLEY: Yes, Judge. We
16 do want to take these people. If you
17 want to put them under oath or however
18 you want to proceed, Judge.

19 Judge, what I would like to
20 mention on behalf of Mr. Joyce is that
21 the Court, I presume, has looked at this
22 presentence report, which reflects part
23 of Mr. Joyce's record. We submit to the
24 Court that of interest here, Judge, is
25 that I believe he has had no convictions

1 for anything other than class C
2 felonies. The assault seconds on this
3 record are class C's.

4 I don't know what the State
5 might say about those cases but an
6 assault second is always a class C
7 felony. Some of those original charges
8 -- one of them was disposed of by a
9 conviction of a misdemeanor. So it
10 wasn't a class C felony when it was done.
11 That was a 1997 case.

12 We ask that the Court take all
13 the matters into consideration. When we
14 hear from his mother and from his aunt,
15 that the Court only consider the
16 alternative for life in this case. I
17 think that would be -- I think that would
18 be the correct sentence for Mr. Joyce
19 under the circumstances. I would like to
20 let her speak, Ms. Ruby Joyce.

21 MS. JOYCE: Judge, I would just
22 like to take this time to just really put
23 my son's life in your hands, on the mercy
24 of the Court. He is the only son I
25 have. I was married to his father for

1 twenty-seven years. His father is now
2 deceased. He died while he was in jail.
3 He has been dead now six years.

4 He has two daughters, one ten
5 and one eight. I just would like to put
6 myself and my son and the family on the
7 Court's mercy.

8 THE COURT: Thank you, ma'am.

9 MR. HARTLEY: Ms. Patterson,
10 you want to say anything?

11 MS. PATTERSON: Good morning.
12 How are you doing? I would just like to
13 appeal for a life sentence. I am aware
14 of his past. All things considered, I
15 would really appreciate some mercy.

16 THE COURT: Okay.

17 MR. POWELL: Judge, first of
18 all, the victim's family is present.
19 They just are going to choose to remain
20 seated there because of the emotion
21 involved in the case.

22 We have a victim's impact
23 statement. Does Your Honor have one in
24 the file? If not, I would be happy to
25 provide you my copy.

1 THE COURT: I don't.

2 MR. POWELL: Here, Your Honor.

3 MR. HARTLEY: We would like to
4 get a copy.

5 MR. POWELL: We can arrange for
6 that, Judge. The main thing I would like
7 to address at sentencing, Judge, is --

8 (Off-the-Record Discussion.)

9 THE COURT: Let's just take a
10 two-minute break. Let's make sure
11 everybody has got everything.

12 (Brief Recess.)

13 THE COURT: Okay. I have read
14 these letters. I appreciate that.

15 MR. POWELL: Judge, the main
16 thing I want to address at this point is
17 the Defendant's record. Though Mr.
18 Hartley was correct that all of the
19 charges or most of them were either class
20 C misdemeanors or felonies or a
21 misdemeanor -- class C felonies or
22 misdemeanors, they all involve offenses
23 where the defendant was shooting at
24 people, at vehicles, or actually shooting
25 people.

1 It is just the way the assault
2 statutes are written in the State of
3 Alabama, particularly until recently
4 until they changed the law on how you
5 define serious physical injury. Back
6 then it basically had to be life
7 threatening. And if you just shoot
8 somebody in the leg or the arm or
9 something like that, then that's just a
10 class C felony.

11 But nonetheless, the first
12 offense occurred on 10/15 of 1994. The
13 victim is Quivan (sic) Martin. Stand up,
14 Quivan. This individual, they were at an
15 intersection of Bitner and Sherwood, and
16 the defendant fired a .32 revolver at the
17 victim while the victim was inside
18 his '79 Olds Cutlass.

19 I think the defendant then gave
20 a statement in that case and said that he
21 shot four times and scared the victim.
22 Hit the windshield and ran and disposed
23 of his gun by giving it to a junky.

24 The next incident in this case
25 was nol-prossed but it was part of a

1 package deal with the prior case. On
2 11/7 of '94 he again had an altercation
3 with Mr. Martin. The victim, Mr. Martin,
4 was leaving the Hardee's restaurant over
5 around Oak and Mill Street. The
6 defendant and several others followed.
7 One of them was hanging out the window
8 shooting. Five shots were fired at the
9 victim's Olds Cutlass in that case.

10 MR. HARTLEY: Your Honor, can I
11 interject -- I mean interrupt and ask Mr.
12 Powell to distinguish these by case
13 numbers so we will know exactly where we
14 are. The first one -- go back and cite
15 for us, please, the case number on the
16 first one.

17 MR. POWELL: The first incident
18 where he shot at Mr. Martin's car was
19 CC 94-2506. Here is my certified prior
20 felony conviction on that one if you want
21 to look at it. The second incident
22 involving Mr. Martin was CC 95 -- looks
23 like 132.

24 THE COURT: Is this the one
25 that was nol-prossed?

1 MR. POWELL: This is the one
2 that was nol-prossed.

3 THE COURT: I can't consider
4 one that has been nol-prossed. Let's
5 don't even go there. That just creates a
6 problem for everybody.

7 MR. POWELL: The next incident
8 -- and this is going to be CC 96-1980.
9 It is an assault in the second degree.
10 The victim in that case was an individual
11 named Johnny Lawson, Jr. Here is our
12 certified on that one. The facts in this
13 case are markedly similar to the facts in
14 the case you heard at trial, Judge.

15 Basically, the victim and the
16 defendant were in an argument. The
17 defendant just pulled out a gun and shot
18 the victim. The victim ran and the
19 defendant shot him again in the leg.
20 There were several witnesses, and he pled
21 guilty to that count.

22 The next incident -- looks like
23 it is going to be CC 97-1984 and 1985.
24 These were felony convictions for assault
25 in the second degree. That involved an

1 individual named Henry Green and Pleasant
2 Polanski. There the defendant and the
3 victims were all stopped at the same red
4 light. Apparently words were exchanged
5 between the cars, and the defendant
6 pulled a gun and shot at the car five to
7 six times hitting both of the victims in
8 the process. He pled guilty to that and
9 received a sentence of fifteen years
10 split to serve three.

11 The final case -- these were
12 the assault seconds that were pled out to
13 misdemeanors, were CC 97-2031 and
14 97-2053. I have got certified on them.

15 MR. HARTLEY: They are just
16 misdemeanors, Judge. They are not
17 priors.

18 MR. POWELL: We are not
19 offering them as priors. We have already
20 got three priors, but he can consider
21 them for sentencing purposes. They were
22 reduced to misdemeanors.

23 In that case, the victims were
24 Tawan Brown and Steven Stewart. They are
25 driving through the Windy Wood

1 Apartments. The defendant was driving in
2 the opposite direction. They passed each
3 other at a speed bump, and the defendant
4 shot at the victim's car. He shot Mr.
5 Stewart in the face and leg and he shot
6 Mr. Brown in the shoulder. I think those
7 were pled out in a package deal with the
8 prior two felony convictions with Mr.
9 Green and Mr. Polanski.

10 So, basically, if you look at
11 the defendant's priors, Judge, we have
12 got a progressive pattern from
13 discharging a gun into occupied vehicles,
14 to shooting at people, to actually
15 shooting people on one, two, three, four,
16 five people he has actually shot --
17 actually bullets hit them and one person
18 he shot at.

19 That's before we even get to
20 this case you heard at trial, which he
21 finally lost his temper, or whatever you
22 want to call it out there, shot and
23 killed Mr. Friendly for basically no
24 apparent reason whatsoever. At this
25 point --

1 THE COURT: Am I correct he was
2 on probation at the time he --

3 MR. POWELL: That would be
4 accurate, Judge.

5 THE COURT: How long had he
6 been out?

7 MR. POWELL: That, I'm not
8 sure. It hadn't been long.

9 THE COURT: Yeah.

10 MR. POWELL: I can't remember
11 what the witnesses told me.

12 THE COURT: Wiley, anything
13 y'all want to say?

14 MR. HARTLEY: Mr. Joyce wants
15 to speak, Judge.

16 THE DEFENDANT: Yes, Your
17 Honor. Your Honor, I did that. I did
18 all that. Some of the issues I was
19 trying to get Mr. Hartley to speak at
20 trial, he said he couldn't bring forth
21 because I didn't take the stand with it.
22 I didn't kill the dude and ran to
23 California. I seen the dude. I know who
24 killed the dude. When he was killed, me
25 and my home boy, we left.

1 THE COURT: I'm sorry. What
2 did you say?

3 THE DEFENDANT: When the dude
4 was killed, the dude I was with, we
5 left. Some dudes called on my cell
6 phone, which the only dude that have my
7 cell phone, right? That's the only dude
8 I know. And I met D. . .
9 (unintelligible). When D called my cell
10 phone said if you and your home boy talk
11 to the police in any kind of way, you'll
12 end up like Boo or somebody close to
13 you. I ain't trying to make up no lies.
14 It scared me for my folks. I thought the
15 best thing for me to do is just leave. I
16 told them on the phone, I said, look,
17 man, y'all ain't got to worry about me
18 because I'm gone. Plus, I just got out
19 of prison five years. I did five years.
20 I left for the safety of my folks in case
21 their house didn't got shot up.

22 A few years ago, I catch
23 another case or maybe somebody kill me.
24 That's the reason I left. I ain't get in
25 no argument with no dude about who the

1 baddest. The argument was about some
2 money. Boo and Rabbit was arguing about
3 money. Boo told Rabbit, man, you going
4 to take my mother fuckin' money, like
5 that. I was trying to break them up. I
6 thought Boo was from Smiley Court. They
7 were still arguing.

8 I told -- I told Boo -- I told
9 Boo, I said, look, man, whatever he -- I
10 know now he had some stuff. I said, man,
11 whatever you owe him give it back to
12 him. He said no, fuck that. It's the
13 principle. He got me fucked up. He
14 ain't going to take my shit like that.
15 Boo said, you know, I'll come back and
16 shut this bitch down. Rabbit said, you
17 ain't gonna shut shit down in Smiley
18 Court.

19 THE COURT: Mr. Joyce, I will
20 listen to whatever you have got to say
21 but I don't decide your guilt or
22 innocence.

23 THE DEFENDANT: It's the facts
24 that Mr. Hartley couldn't bring up that I
25 was telling him.

1 THE COURT: The jury found you
2 guilty. I've got to respect that
3 verdict. I can't substitute my judgment
4 for the jury's verdict.

5 THE DEFENDANT: I ain't shoot
6 the man, Mr. Hobbs.

7 THE COURT: I can't -- the jury
8 says you did. As far as I'm concerned --

9 THE DEFENDANT: The dude that
10 came with me -- excuse me. The dude that
11 came with him said who shot him. Bryant
12 Thomas told the detective who shot him.
13 The gun was in the courtroom. That's the
14 gun Rabbit had. I was stopping Rabbit
15 from shooting me. He told D to shoot
16 Boo. Boo was shooting at Bryant Thomas.

17 THE COURT: Anything else?

18 THE DEFENDANT: Then the girl
19 in the corner said he was in the house
20 but first she said he fled the scene. I
21 ain't shoot the dude. The only thing I
22 knew -- I didn't shoot the dude. I know
23 who did it.

24 THE COURT: I understand you
25 are saying you are innocent.

1 THE DEFENDANT: I ain't fixing
2 to -- ain't no way in the world I am
3 going to walk up to somebody I don't know
4 and say I'm badder than you. I didn't
5 even know the man. I was trying to break
6 them up. I didn't want to be around no
7 trouble. I just got out of prison.

8 THE COURT: Anything else?

9 MR. HARTLEY: Judge, if Mr.
10 Joyce wants to say more, I want him to
11 have every opportunity to speak to the
12 Court. Judge, I would say that we would
13 ask you to consider the life sentence
14 because even at his best hope he will
15 serve a very, very, very long time on a
16 life sentence. We ask the Court not to
17 take away that twenty years from now or
18 thirty years from now he might make a
19 parole date. That's all we are asking
20 because the finality of a life without
21 parole sentence, Judge, we believe
22 doesn't fit this case.

23 MR. POWELL: Your Honor, I just
24 remind you of the names of Quivan Martin,
25 Johnny Lawson --

1 THE DEFENDANT: Your Honor, I
2 did that.

3 MR. POWELL: -- Henry Green,
4 Pleasant Polanski, Tawan Brown, Steven
5 Stewart, and now James Friendly. Enough
6 is enough.

7 THE DEFENDANT: Your Honor, I
8 did that. I was young. I did that, but
9 if you know the issues behind that, it
10 was either me or them. I didn't kill
11 this dude here. Like I said, I know who
12 killed him. I seen who killed him. I
13 was right there. B.K., he say -- he got
14 on the stand. He said he didn't know the
15 dude but him and Rabbit, they grew up
16 together. I know D, so I know you know
17 him. The girl said when she came outside
18 they fled the scene. Then she come to
19 court and say he was in the house when
20 she went outside. Rabbit said he was
21 across the street.

22 THE COURT: The problem in this
23 whole thing, you got two guys -- what I
24 remember the testimony being, it is
25 pretty clear to me, both in gangs. I'm

1 not going to consider that for the
2 sentencing but, you know, I don't see any
3 thirty-five year old gangsters in the
4 courtroom. They are either dead like Boo
5 or they are standing where you are.
6 That's the problem here is guns.
7 Shooting has just gotten to be a way of
8 life with some folks.

9 I'm sorry, Ms. Joyce. I don't
10 know what got your son headed down this
11 path but that's the path he chose.
12 Sometimes I don't follow the
13 prosecution. Sometimes I strongly
14 disagree with them. But, you know, you
15 shot too many people, man.

16 THE DEFENDANT: Judge, if you
17 just knowed everything. In your
18 courtroom, the dude was lying on me.

19 THE COURT: Mr. Joyce, let me
20 just say this.

21 THE DEFENDANT: I was holding
22 my composure.

23 THE COURT: I had a previous
24 case. The jury found the guy -- a very
25 serious crime. They found him guilty of

1 a lesser crime. If they found him guilty
2 of the serious crimes, I would have
3 thrown the book at him but I couldn't do
4 it because I had to respect their verdict
5 when they found him guilty of relatively
6 lesser crimes.

7 But the jury has found you
8 guilty. I can't do anything about that.
9 I have to believe -- I have to sit up
10 here and accept their jury verdict even
11 if I disagreed with it, which I don't.
12 They found you guilty. And that's what
13 I'm looking at now. You've shot at four
14 or five people. Now, you killed a man.

15 THE DEFENDANT: I didn't kill
16 that dude.

17 THE COURT: Well, I think you
18 did. The jury sure thought you did.

19 THE DEFENDANT: The only reason
20 I was in California -- he never said why
21 I was in California.

22 THE COURT: I don't think being
23 in California helped you one bit.

24 THE DEFENDANT: The dude -- if
25 me and you go to a party and somebody

1 kill me, I know you know who killed me.

2 THE COURT: If I go to a party,
3 I'm not going to carry a gun and I'm not
4 going to be at a party calling people
5 -- using the kind of language you've
6 just used in my courtroom.

7 THE DEFENDANT: I'm just
8 speaking from the heart.

9 THE COURT: Mr. Joyce, you have
10 got to learn to turn and walk away.

11 THE DEFENDANT: I apologize,
12 Judge, for cussing.

13 THE COURT: Don't apologize to
14 me.

15 THE DEFENDANT: I ain't killed
16 all -- Ms. Friendly, I ain't killed your
17 son.

18 MS. FRIENDLY: D said you did.
19 I don't --

20 THE COURT: We are not going
21 there. I'm going to sentence you to life
22 without parole. I'll order you to pay
23 fifty dollars to the Crime Victims
24 Compensation Fund.

25 THE DEFENDANT: What, Your

1 Honor?

2 THE COURT: Restitution in the
3 amount of?

4 MR. POWELL: The restitution
5 totals seven thousand six hundred and
6 seventy-five dollars and fifty-one cents.

7 THE COURT: All right.
8 Restitution in that amount. Court
9 costs. A hundred and fifty dollars
10 attorney fee. You have a right to appeal
11 your conviction and your sentence. We
12 will appoint an attorney for you if you
13 can't afford one. We'll give you a
14 transcript of the proceedings free of
15 charge.

16 MR. HARTLEY: Judge, he does
17 give notice of appeal, both the sentence
18 and the trial -- and the conviction,
19 Judge. We ask that the Court appoint him
20 a counsel on appeal, provide him with a
21 transcript.

22 THE COURT: You need to enter a
23 piece of paper withdrawing.

24 MR. HARTLEY: Yes. I will make
25 a motion to withdraw. I know you always

1 appoint.

2 MR. POWELL: Are there any
3 fines or attorneys fees in this case?

4 THE COURT: I said a hundred
5 fifty dollar attorney fee, I believe.
6 Fifty dollars Crime Victims Compensation
7 Fund.

8 MR. HARTLEY: Judge, I have
9 gone over this with my client, but I
10 think we need to make a record on this.
11 We ask for an appeal bond, Judge.

12 THE COURT: I'm not going to
13 give it.

14 MR. POWELL: Besides that,
15 Judge, under the Rules of Criminal
16 Procedure in a sentence of twenty years
17 or more, you are ineligible for an appeal
18 bond.

19 MR. HARTLEY: We just want that
20 on the Record.

21 THE COURT: I understand. It
22 is on the Record. That's it.

23 END OF PROCEEDINGS
24
25

CERTIFICATE

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

I, JUDY E. SHELTON, OFFICIAL
COURT REPORTER IN AND FOR THE FIFTEENTH
JUDICIAL CIRCUIT, MONTGOMERY COUNTY,
ALABAMA, DO HEREBY CERTIFY THAT I
REPORTED IN MACHINE SHORTHAND THE
FOREGOING HEARING AS STATED IN THE
CAPTION HEREOF; THAT MY SHORTHAND NOTES
WERE LATER TRANSCRIBED BY ME OR UNDER MY
SUPERVISION, AND THAT THE FOREGOING PAGES
REPRESENT A FULL, TRUE AND CORRECT
TRANSCRIPT OF SAID PROCEEDINGS; THAT I AM
NEITHER KIN NOR OF COUNSEL TO ANY PARTIES
IN THIS PROCEEDING NOR IN ANY WAY
INTERESTED IN THE RESULTS THEREOF.

DATED THIS THE ____ DAY OF _____,
2003.

JUDY E. SHELTON

OFFICIAL COURT REPORTER

CERTIFICATE

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

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IN THIS PROCEEDING NOR IN ANY WAY
INTERESTED IN THE RESULTS THEREOF.

DATED THIS THE 10th DAY OF Nov.,
2003.

Judy E. Shelton
JUDY E. SHELTON

OFFICIAL COURT REPORTER

CL-02-2104
Part 5 of 5

DOCUMENT NAME: Joyce, Darryl Jewon

CLIENT & MATTER: 58199-001

DESCRIPTION:

County: Montgomery

CC#s: 2002-1417

Attorney: Jean Therkelsen

Circle: TRANSCRIPT CASE FILE BOTH

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CERTIFICATION

I hereby certify that the preceding imaged records and documents
are a true, accurate, and complete image of the original records or
documents as received by the Office of the Attorney General of
the State of Alabama.

This the 19th day of January, 2005.

Signed: Melissa A. Martin

Notary: Coleen F. Gibson

Coleen F. Gibson
Notary Public
Commission expires 06/11/06